

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number

23982-11569

Pursuant to 240 OG 45 and the *Legal Framework For EFS-Web*, I hereby certify that this follow-on correspondence is being officially submitted through the USPTO EFS-Web system from the Pacific Time Zone of the United States on the local date shown below.

on March 19, 2007Signature /Daniel R. Brownstone 46,581/Typed or printed
nameDaniel R. Brownstone

Application Number

10/015,502

Filed

December 11,
2001

First Named Inventor

Kerry Champion

Art Unit

2136

Examiner

Pramila Parthasarathy

This request is being filed with a notice of appeal.

I am the

☐

applicant/inventor.

/Daniel R. Brownstone 46,581/

Signature

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

Daniel R. Brownstone

Typed or printed name

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attorney or agent of record.

Registration number 46,581(415) 875-2358

Telephone number

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 46,581March 19, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒*Total of 1 of 1 forms is submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Kerry Champion
SERIAL NO.: 10/015,502
FILING DATE: December 11, 2001
TITLE: Traffic Manager for Distributed Computing Environments
CONFIRMATION NO: 6525
EXAMINER: Pramila Parthasarathy
GROUP ART UNIT: 2136
ATTY. DKT. NO.: 23982-11569

CERTIFICATE OF EFS-WEB TRANSMISSION			
Pursuant to 240 OG 45 and the <i>Legal Framework For EFS-Web</i> , I hereby certify that this follow-on correspondence is being officially submitted through the USPTO EFS-Web system from the Pacific Time Zone of the United States on the local date shown below.			
Signature:	/Daniel R. Brownstone 46,581/		
Typed or Printed Name:	Daniel R. Brownstone	Dated:	March 19, 2007

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REMARKS ACCOMPANYING REQUEST FOR PRE-APPEAL BRIEF CONFERENCE

Claims 1-68 are pending in this application and stand rejected. Applicants are on this date filing a Notice of Appeal and intend to pursue an appeal of claims 1-68.

Pursuant to O.G. Notice 1296 OG 67, Applicants request a Pre-Appeal Brief Conference.

These Remarks are intended to supplement the Request.

The Examiner rejected claims 1-3, 5, 15, and 23-68 under 35 U.S.C. § 102(e) as being anticipated by Atwal (U.S. Patent Application 2003/0061404). Also, claims 4, 6-14,

16-21, 26, and 36 were rejected under 35 U.S.C. 103(a) as being unpatentable over Atwal in further view of Della-Libera (U.S. Patent Application 2003/0074579).

The earliest priority date of Atwal is September 21, 2001 and the earliest priority date of Della-Libera is October 16, 2001. On June 23, 2006, Applicant submitted a Declaration of Fact under 37 C.F.R. § 1.131 in which he swore behind each of the cited references. As demonstrated by the Rule 131 Declaration, the claimed invention was both conceived of and constructively reduced to practice prior to September 21, 2001.

The supplied Declaration included a PowerPoint presentation showing an implementation of a SOAP traffic manager. The PowerPoint presentation (“Exhibit A” to the Declaration) bears the date “9/11/01” in its footer. Further, Applicant states in the declaration that “I gave this presentation on September 11, 2001, as further indicated by the date in the lower left-hand corner of the selected pages. I prepared this presentation well in advance of that date.”

The contents of the presentation illustrate that the SOAP traffic manager enables the exchange of SOAP messages between client and server programs. In addition, the SOAP traffic manager enables security models (such as encryption/decryption and signature verification), as well as malicious attack protections (such as service attacks) and DMZ policy enforcement (DMZ stands for demilitarized zone, which is an area that exists between trusted and untrusted networks to provide additional levels of security). The SOAP traffic manager is shown: receiving a SOAP message, determining whether a security rule has been defined for the SOAP message (based on a security policy for exchanging SOAP messages), and performing a security related operation on the SOAP message based on the security rule.

The Declaration also included a “SOAP Traffic Manager Software Architecture Document” as “Exhibit B”. The version information on the face of the document includes a date of “03.09.2001”. Applicant states in the Declaration that “[t]he last noted revision date of the Architecture Document is September 3, 2001 (shown in European format as ‘03.09.2001’).”

Accordingly, the two Exhibits and Declaration illustrate Applicant's conception of a SOAP traffic manager as defined by the claimed invention prior to the September 21, 2001 date of the Atwal reference.

In her Final Office Action, the Examiner stated that the Declaration is ineffective to overcome the references because it does not establish conception prior to September 21, 2001. The Examiner states that:

- Although the PowerPoint presentation has a "09/11/2001" date on it, the date must be interpreted as November 9, 2001 in order to be consistent with the date format of the Architecture Document; and
- Applicant has not declared that he gave the PowerPoint presentation.

Addressing the second point first, as noted above Applicant stated explicitly that "I gave this presentation on September 11, 2001, as further indicated by the date in the lower left-hand corner of the selected pages" (Declaration, para. 2(a)). Accordingly, the Examiner's assertion that the Applicant has not declared that he gave the PowerPoint presentation is without merit.

To the remaining point, it would defy logic to suggest that a presentation was given on September 11, 2001 using a slide deck prepared two months later. Furthermore, Applicant has declared under penalty of criminal prosecution that the presentation was prepared in advance of, and was given on, September 11, 2001. The November 9, 2001 date attributed to the Exhibit by the Examiner is erroneous.

The Declaration therefore clearly demonstrates Applicant's conception of the claimed invention prior to the date of either the Atwal and Della-Libera references, and thus disqualifies them. Consequently, the Examiner's final rejection is improper and must be withdrawn.

Respectfully submitted,
Kerry Champion

Date: March 19, 2007

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